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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

NO. 347 - 348 - 349

In re: Petition in Appeal of JONES & LAUGHLIN STEEL CORPORATION from Resolution adopted July 6, 1948, by School District of the Borough of Centerville, a political subdivision, at No. 295 May Sessions, 1948. (Appeal of School District of Borough of Centerville at No. 113 March Term, 1949, in the State Supreme Court.)

In re: Petition in Appeal of JONES & LAUGHLIN STEEL CORPORATION from Resolution adopted July 6, 1948, by School District of the Borough of Centerville, a political subdivision, at No. 296 May Sessions, 1948. (Appeal of Jones & Laughlin Steel Corporation at No. 119 and 121 March Term, 1948, in the State Supreme Court.)

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari be issued to review the final order of the Supreme Court of Pennsylvania, entered on June 24, 1949, dismissing an appeal by the petitioner from a final order by the Court of Common Pleas of Washington County, Pennsylvania, entered on the 31st day of January, 1949.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 of the Judicial Code, as amended (28 U. S. C. A. Sec. 344.)

Questions Presented.

The questions presented for review by this Court are:

1. Did the Supreme Court of Pennsylvania err in holding that the Resolution of the School District imposing a tax of five cents per ton for the privilege of dumping or unloading of slate, stone, slag or other waste materials from the mining of coal or from the manufacture of steel was void, and was said ruling in violation of the due process clause of the Federal Constitution?

2. Did the Supreme Court of Pennsylvania err in holding that the Resolution of the School District imposing a tax on the transportation of coal through the Borough was invalid because the property sought to be taxed did not have an actual situs within the boundaries of said School District, and was said ruling in violation of the due process clause of the Federal Constitution?

3. Did the lower court of Washington County err in holding that a tax on the transportation of coal through said school district was invalid because said tax interfered with interstate commerce? (Supreme Court did not rule on this question.)

4. Did the lower court of Washington County err in holding that a tax upon the transportation of coal through said school district was unreasonable as said tax may be subject to duplication by other adjoin-

ing districts, and was said ruling in violation of the petitioner's rights under the Fourteenth Amendment to the Constitution of the United States? (Supreme Court did not rule on this question.)

Statutes Involved.

The relevant portions of the pertinent statutory provisions are set forth in the Appendix to this petition.

Statement of Facts.

The facts of this case are set forth in a copy of the record used in the appeal to the State Supreme Court and is attached to this petition, and will be found in said record, pages 22a to 27a.

The Manner in Which Petitioner Raised in the Courts Below, The Federal Questions Sought to Be Reviewed.

In the petition filed by Jones & Laughlin Steel Corporation, a taxpayer, No. 296 May Sessions, 1948, in the Court of Quarter Sessions of Washington County, Pennsylvania, said taxpayer objected to the validity of a tax on waste material by alleging that the tax sought by said resolution was confiscatory and was a taking of property without due process. The Court of Common Pleas held that the tax was not confiscatory and was not a taking of property without due process of law.

The Supreme Court of Pennsylvania held that the Resolution was void because the School District taxed a privilege which was already taxed by the state.

In the petition filed by Jones & Laughlin Steel Corporation, a taxpayer, at No. 295 May Sessions, 1948, in the Court of Quarter Sessions of Washington County, Pennsylvania, said taxpayer objected to the validity of a tax on transportation of coal as confiscatory and as a deprivation of property without due process.

The Jones & Laughlin Steel Corporation also alleged in the lower court that a tax on waste materials was an unreasonable burden on the taxpayers' product as it moved in interstate commerce. The lower court held that the tax on the dumping of waste material has no connection with interstate commerce and, therefore, is not a burden on interstate commerce. This objection was also raised by Jones & Laughlin Steel Corporation in its brief with the Supreme Court of Pennsylvania. The Supreme Court did not rule on this objection.

The Jones & Laughlin Steel Corporation also alleged in the lower court that a tax on the transportation of coal as it moved through the school district of Centerville Borough was an unreasonable burden on the taxpayers' coal as it moved in interstate commerce. The lower court held that "the terms of the resolution are broad enough to include all coal transported through the Borough of Centerville by public carriers in the course of interstate commerce. This placing of a burden on interstate commerce by various municipalities and school districts is not permissible."

The Jones & Laughlin Steel Corporation also objected to the tax on transportation of coal for the reason that there was no situs of said coal in the District. This was argued at length in the brief filed by said taxpayers in the lower court. Your petitioner also discussed this

question in the brief filed with the State Supreme Court. The lower court held this tax invalid because "coal being transported through the taxing district does not have any location or situs within the limits of that political subdivision, whether it be by public carrier, by means of mine tracks, or on trucks operated on public highway." The Supreme Court sustained the lower court on the above contention.

Reasons for Granting the Writ.

The questions involved in this case are substantial, involving the right to impose a tax under a state statute and involving the question of due process of law under the Federal Constitution. It also involves the question of taxing property that has a situs in said school district. It likewise, involves the question of whether or not the tax is confiscatory and unreasonable.

I.

The first question involved in this case is whether a school district may pass a resolution imposing a tax upon the privilege of dumping slate and other waste material from the process of coal mining, where in this case the taxpayer is not engaged in coal mining in said school district but causes all of its slate and other waste material to be transported by river barges into said school district. There is no substantial dispute as to what is involved in this controversy.

It has been agreed by counsel to both parties that all of the slate and other refuse comes into said district by barge from outside the district. The lower court held

that the tax on the privilege of dumping said waste material was a reasonable one and therefore valid. The reason being that the dumping of said waste material into said school district causes the depreciation of the assessed value of real estate.

Petitioner further states that the dumping of slate material in said school district not only causes depreciation in assessed valuation of real estate but also causes the school district to receive less taxes, due to the decreased valuation of real estate. It also causes a nuisance and a fire hazard.

The tax was passed in order for said school district to raise additional revenue in order to meet the increase in teachers' salaries and increased costs of school supplies and repairs to school buildings. The lower court states in its opinion that Act No. 481 was passed to grant financial relief to school districts over the entire state and enable them to meet the problem of increased costs of operations without adding the burden of taxation upon real estate.

The Jones & Laughlin Steel Corporation is the only corporation engaged in the mining of coal in said school district. It is also the only corporation engaged in dumping slate waste in said district. It at one time was the owner of hundreds of homes where coal miners lived and rented said homes. Today all of the homes have been sold and the coal company pays very little taxes. The school board was of the opinion that the corporation should pay its just share of taxes and, therefore, imposed this tax.

We believe that under these circumstances the Supreme Court, in holding this taxing resolution invalid,

has disputed the taxing authority of its right under the Fourteenth Amendment to the Constitution of the United States. This is our position particularly in view of the fact that similar resolutions, passed under the same Act involved in this controversy, were approved by the Supreme Court of Pennsylvania, prior to the time of the adoption of the present resolution. The present taxing authority then passed its resolution, prepared its budget, ear-marked its revenues from said taxing resolutions and made commitments to its teachers and various employees on the basis of said tax revenues.

II.

The second issue in this case involves the right to tax coal as it is being transported through the school district.

The lower court and the Supreme Court held that there was no situs of said coal in the district and that therefore, it could not be taxed.

Petitioner refers to the agreed facts of this case that the corporation was engaged in the mining of coal in said school district. The record discloses that the Plaintiff Corporation had mined 121,500 tons of coal in said district during the period covered by said resolution. The lower court improperly held that there was no situs of the coal in the district. This was sustained by the Supreme Court.

It was admitted by both parties to this proceeding that approximately ninety-five per cent of the coal transported through Centerville School District was being used by the corporation at its manufacturing plants located in Allegheny County, Pennsylvania, and that no

coal was ever transported into other states from Pennsylvania, therefore, petitioner contends that the coal had an actual situs as it was being transported through the said district and therefore was taxable by your petitioner. (See *Coe v. Errol,* 62 New Hampshire, 303, affirmed in 116 U. S. 517.)

Under these admitted circumstances, it is contended that the rights of the said school district as a taxing authority have been violated by the interpretation of said statute and that the rights of the petitioner under the Fourteenth Amendment to the Constitution of the United States have been abridged.

Conclusion.

These issues are all substantial ones. They affect the Constitutional rights of the petitioner and their rights depend upon the interpretation of the Fourteenth Amendment to the Constitution of the United States, and should therefore be passed upon by this Court.

The petitioner is a municipal sub-division which is in financial straits, and the outcome of this controversy will affect almost every individual and citizen of the taxing district.

While the petitioner realizes that it has no constitutional right to rely on previous decisions of the State Supreme Court in upholding general propositions of law once adopted will remain unchanged, your petitioner claims that a prior decision of the State Supreme Court led it to adopt its resolution and subsequently to adopt its budget based on said resolution. Under these circumstances we contend that it is a denial of the rights of the petitioner under the due process clause of the Con-

stitution of the United States to subsequently hold said resolution invalid, thereby disrupting the financial stability of the petitioner and affecting the education of all the free school students of the district.

Although this is the only appeal to the Supreme Court of the United States, the decision in this case will affect hundreds of similar school districts in the State of Pennsylvania, first-class townships and boroughs in said state, all of which have passed similar resolutions and ordinances under the same Act of Assembly of the Commonwealth of Pennsylvania.

Respectfully submitted,

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APPENDIX.

Section 1 of Act 481 passed June 25, 1927, P. L. 1145, 53, P. S. 2015.1.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The duly constituted authorities of cities of the second class, cities of the second class A, cities of the third class, boroughs, towns, townships of the first class, school districts of the second class, school districts of the third class, and school districts of the fourth class, shall have the authority, by ordinance or resolution, for general revenue purposes, to levy, assess, and collect, or provide for the levying, assessment, and collection of such taxes on persons, transactions, occupations, privileges, subjects, and personal property, within the limits of such political subdivision, as it shall determine, except that such local authorities shall not have authority by virtue of this act to levy, assess, and collect, or provide for the levying, assessment and collection *of any tax on a privilege, transaction, subject, occupation,* or *personal property which is now or does hereafter become subject to a state tax or license fee, nor have authority* to levy, assess, or collect a tax on the gross receipts from utility service of any person or company whose rates and services are fixed and regulated by the Pennsylvania Public Utility Commission, nor have authority, except on sales of admission to places of amusement or on sales or other transfers of title or possession of property, to levy, assess, or *collect a tax on the privilege of employing such tangible property as is*

now or does hereafter become subject to a state tax. If, subsequent to the passage of any ordinance or resolution under the authority of this act, the General Assembly shall impose a tax or license fee on any privilege, transaction, subject, or occupation, or on personal property or on sales of admission to places of amusement or on sales or other transfers of title or possession of property taxes by any such political subdivision hereunder, the act of assembly imposing the state tax thereon shall automatically vacate the ordinance or resolution passed under the authority of this act as to all taxes accruing subsequent to the end of the current fiscal year of such political subdivision. It is the intention of this section to confer upon such political subdivision the power to levy, assess, and collect taxes upon any and all subjects of taxation which the Commonwealth has power to tax but which it does not now tax or license, subject only to the foregoing provision that any tax upon a subject which the Commonwealth does hereafter tax or license shall automatically terminate at the end of the current fiscal year of the political subdivision.

The aggregate amount of taxes annually imposed by enactment of an ordinance or resolution by any political subdivision under this section shall not exceed an amount equal to the product obtained by multiplying the total assessed valuation of real estate in such political subdivision at the time of the said enactment by the maximum millage of tax thereon allowed by law.